IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALLSTATE INSURANCE CO. Plaintiff, v. TUCKNOTT ELECTRIC CO., INC.; ROBERT ALLEN TUCKNOTT, JOSE SAMUEL MOLINA, and ELIDIA DIAZ MOLINA Defendants.	Case No. 14-CV-01804 SC ORDER GRANTING DEFENDANTS' MOTION FOR ABSTENTION FROM HEARING DECLARATORY RELIEF ACTION

I. INTRODUCTION

Now before the Court is Defendants Samuel Molina and Elidia Diaz Molina's motion seeking abstention from hearing this declaratory relief action filed by Plaintiff Allstate Insurance Company ("Allstate"). ECF No. 18 ("Mot."). Defendant Robert Tucknott joins in the motion. ECF No. 21 ("Joinder"). The motion is opposed, fully briefed,[1] and appropriate for resolution without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons

[1] ECF Nos. 20 ("Opp'n"); 22 ("Reply").

set forth below the motion is GRANTED and the complaint is DISMISSED without prejudice.

II. BACKGROUND

This is an insurance coverage dispute arising from an automobile-bicycle accident. Tucknott was driving his automobile when his vehicle struck the Molinas. Following the accident, the Molinas filed suit in state court ("the Underlying Action") against Tucknott and several of his companies, including Tucknott Electric, which was the named insured in an Allstate Business Auto Policy ("the Policy"). After the suit was filed, Tucknott Electric and Tucknott tendered the suit to Allstate. Allstate agreed to defend Tucknott and Tucknott Electric, while nevertheless reserving the right to argue that no coverage exists.

Allstate then brought this declaratory judgment action seeking a court order resolving its coverage obligations. In this motion, Defendants argue that the Court should decline to hear Allstate's declaratory judgment action, and instead dismiss the case in favor of having the issue heard in state court.

III. LEGAL STANDARDS

A. Declaratory Judgment

The Declaratory Judgment Act, 28 U.S.C. Section 2201(a) provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." The purpose of the Declaratory Judgment Act is to

"bring[] to the present a litigable controversy, which otherwise might only be tried in the future." Societe du Conditionnement en Aluminium v. Hunter Eng'g Co., Inc., 655 F.2d 938, 943 (9th Cir. 1981).

B. Abstention under the Declaratory Judgment Act

"By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants." Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995). Two cases, Brillhart v. Excess Insurance Co. of America, 316 U.S. 491, 495 (1942) and Wilton, explain the circumstances in which district courts ought not string that arrow.

Under Brillhart/Wilton, courts consider three factors in determining whether abstention is appropriate ("the Brillhart factors"): "avoiding 'needless determination of state law issues'; discouraging 'forum shopping'; and avoiding 'duplicative litigation.'" R.R. Street & Co., Inc. v. Transp. Ins. Co., 656 F.3d 966, 975 (9th Cir. 2011) (quoting Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1224 (9th Cir. 1998)). Although the Brillhart factors "remain the philosophic touchstone for the district court," Dizol, 133 F.3d at 1225, they "are not necessarily exhaustive." Huth v. Hartford Ins. Co. of the Midwest, 298 F.3d 800, 803 (9th Cir. 2002). Other factors that courts have considered include:

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> [W]hether the declaratory action will settle all aspects of the controversy; whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a "res judicata" advantage; or whether the use of a declaratory action will result in entanglement between the federal and state court systems. In addition, the district court might also consider the convenience of the parties, and the availability and relative convenience of other remedies.

Dizol, 133 F.3d at 1225 n.5. None of these factors is dispositive, and district courts have broad discretion in declining to hear declaratory judgment actions "as long as it furthers the Declaratory Judgment Act's purpose of enhancing judicial economy and cooperative federalism." Dizol, 133 F.3d at 1224; see also Huth, 298 F.3d at 802-03.

IV. DISCUSSION

Defendants make four arguments in favor of abstention. First, they argue that the Underlying Action involves "overlapping factual questions," and accordingly should be considered a parallel action for the purposes of Brillhart and Wilton. Mot. at 2. Specifically, they argue that the questions of the ownership and operation of the automobile and the liability of Mr. Tucknott's businesses will be at issue in both the Underlying Action and this action. Second, they argue the forum-shopping factor weighs in favor of abstention because Allstate's declaratory judgment action was filed in response to the already-filed Underlying Action in state court. Id. at 3 (citing Wilton, 515 U.S. at 283; Dizol, 133 F.3d at 1225-26). Third, Defendants contend they will be subjected to prejudicial discovery costs by being forced to litigate in both

state and federal court. Id. at 2-3. Finally, in addition to the above factors, Defendants argue the Court can and should consider that if the Court were to dismiss the declaratory judgment action no other grounds for federal jurisdiction would remain. Mot. at 2 (citing Md. Cas. Co. v. Knight, 96 F.3d 1284, 1289 (9th Cir. 1995)).

Allstate disagrees with each of Defendants' arguments, instead arguing that there is a presumption in favor of declaratory relief, and, in any event, Defendants cannot satisfy the Brillhart factors. First, Allstate points to numerous cases recognizing authority under the Declaratory Judgment Act to "determine [an insurer's] obligations to defend and indemnify its insured against a third-party claim." Opp'n at 4 (collecting cases). Second, Allstate contends abstention is inappropriate in the absence of a 'parallel' state court action. Because, in Allstate's view, the Underlying Action raises distinct factual and legal issues and involves different parties, abstention is per se inappropriate. Third, Allstate argues there is no forum-shopping concern here because it is not (and in its view could not be) a party to the Underlying Action. Id. at 8 (citing Imperium Ins. Co. v. Unigard Ins. Co., -- F. Supp. 2d --, 2014 WL 1671806, at *3 (E.D. Cal. Apr. 28, 2014)). Finally, Allstate states that it, not Defendants, will be prejudiced if the Court declines to hear this case.

As a preliminary matter, the Court can find no support for Allstate's contention that it is presumptively entitled to declaratory relief. To the contrary, the decision of whether to hear a declaratory judgment action is clearly discretionary. Wilton, 515 U.S. at 288. To be sure, federal courts can and often

do elect to hear declaratory judgment actions to determine an insurer's obligations to defend or indemnify an insured against a third party claim, and "there is no presumption in favor of abstention in declaratory actions generally, nor in insurance coverage cases specifically." Dizol, 133 F.3d at 1225. But the absence of a presumption in favor of abstention does not render declaratory relief "presumptively available." Relatedly, Allstate is also mistaken in its apparent belief that Defendants must show a "compelling reason" for the Court to decline to hear a declaratory relief action. Opp'n at 3. Such a rule would effectively transform the discretionary Brillhart/Wilton standard into the abstention inquiry under Colorado River Water Conservation District v. United States, 424 U.S. 800, 813 (1976), which requires a showing of "exceptional circumstances" in favor of abstention. Wilton expressly rejected that argument, and reaffirmed Brillhart's discretionary approach to declaratory judgment jurisdiction. 515 U.S. at 286. Accordingly, the Court will apply no presumption in favor of hearing this declaratory relief action, and will instead assess whether to hear the case under the Brillhart factors.

A. Avoiding Needless Determination of State Law Issues

The first factor under Brillhart focuses on whether exercising jurisdiction over the declaratory judgment action will result in the needless determination of issues of state law. It is undisputed that this case raises exclusively questions of state insurance law. Insurance law is "'an area that Congress has expressly left to the states through the McCarran-Ferguson Act,'" a consideration other courts have found compelling in declining jurisdiction. Advent, Inc. v. Nat'l Union Fire Ins. Co. of

Pittsburgh, No. 13-CV-00561-LHK, 2013 WL 3483742, at *4 (N.D. Cal. July 8, 2013) (quoting Cont'l Cas. Co. v. Robsac Indus., 947 F.2d 1367, 1371 (9th Cir. 1991), overruled in part on other grounds, Dizol, 133 F.3d at 1227) (citing 15 U.S.C. § 1011-12 (1988)). Similarly, because jurisdiction here is solely premised on diversity of citizenship, "the federal interest is at its nadir." Cont'l Cas., 947 F.2d at 1371.

Accordingly, this factor weighs in favor of abstention.

B. Discouraging Forum-Shopping

The second factor under Brillhart focuses on discouraging forum-shopping. This factor is "usually . . . understood to favor discouraging an insurer from forum shopping." Am. Cas. Co. of Reading v. Krieger, 181 F.3d 1113, 1119 (9th Cir. 1999). One circumstance generally understood to indicate forum-shopping is a "reactive" declaratory judgment action filed in federal court seeking a ruling as to an insurer's obligations under a policy at issue in a state court action that is, usually because of an absence of diversity jurisdiction, not removable to federal court. See Cont'l Cas., 947 F.2d at 1371; see also Dizol, 133 F.3d at 1225 (reaffirming that "federal courts should generally decline to entertain reactive declaratory actions"). Here the Underlying Action was the first filed action and does not appear to be removable to federal court. Compl. ¶¶ 2-6 (stating that all the parties to the Underlying Action are residents of California). Nonetheless, Allstate offers two reasons why, in its view, this should not weigh in favor of abstention.

Allstate's first argument can be dispensed with quickly. Allstate argues that it "is not (and could not be) a party to the

state court action." Opp'n at 8. Allstate apparently bases this conclusion on California Evidence Code Section 1155's bars against the introduction of evidence of insurance coverage "to prove negligence or other wrongdoing." But California law affords a similar declaratory remedy to that provided by the Declaratory Judgment Act. Compare 28 U.S.C. § 2201, with Cal. Civ. P. Code § 1060 (conferring a right of action in Superior Court to obtain a declaration of one's "rights or duties with respect to another" under an agreement). As a result, other courts, including the Ninth Circuit, have dismissed similar arguments, finding instead that the insurer could simply have filed a state court action for declaratory relief and sought to relate the two matters. See Polido, 110 F.3d at 1423 (holding that an insurer could have brought a declaratory relief action "in a separate action to the same court that will decide the underlying tort action"); Advent, 2013 WL 3483742, at *4 ("[S]tate courts are well equipped to issue a declaratory judgment on a matter that turns solely on questions of state contract and insurance law."); Great Am. Assur. v. McCormick, No. C 05-02175 CRB, 2005 WL 3095972, at *2 (N.D. Cal. Nov. 15, 2005) (Breyer, J.) ("Great American's argument that it is not forum-shopping because it needs a determination of its coverage responsibilities is unavailing. It could have filed a declaratory relief action in state court in Monterey County where such action could have been related to and coordinated with the pending state court actions.")(citing Polido).

Allstate's second argument merits more attention. Relying on a case from the Eastern District of California, Allstate contends that there is no forum-shopping concern where "[t]he parties to

this litigation are not parties to the underlying action and are not seeking to subvert the state court judgment." Imperium, 2014 WL 1671806, at *3. With all due respect to the Imperium court, the Court disagrees. To be sure, one clear circumstance where forum-shopping is a concern is where a state court loser seeks to undermine finality by seeking relief in federal court. Cf. Krieger, 181 F.3d at 1119 (affirming a denial of declaratory relief to bar "the [d]efendants, who [did] not fare[] well in three summary judgments in this action, from wiping the slate clean and starting this litigation anew . . . "). However that is not the only type of forum-shopping that was a concern in Brillhart, Wilton, and the other declaratory judgment abstention cases. Instead, under circumstances such as this one, where the legal question presented is one of state law, there is a prior, pending proceeding in state court involving overlapping facts, and there is an adequate state court procedure for Allstate to obtain a declaration of its coverage obligations, it should be clear why Allstate filed in federal rather than state court -- Allstate seeks what it perceives as a friendly forum.

Because this is a reactive declaratory judgment action and Allstate filed in this court in an effort at forum-shopping, this factor weighs in favor of abstention.

C. Avoiding Duplicative Litigation

"If there are parallel state proceedings involving the same issues and parties pending at the time [a] federal declaratory action is filed, there is a presumption that the entire suit should be heard in state court." Dizol, 133 F.3d at 1225.

Much of Allstate's opposition focuses on the alleged absence

of a parallel action. In Allstate's view, "for the abstention doctrine to apply, a parallel state court action must be pending at the same time as [a] federal declaratory judgment action." Opp'n at 5 (collecting cases) (internal quotation marks omitted). In support of this position, Allstate cites several out-of-jurisdiction cases as well as Polido v. State Farm Mutual Automobile Insurance Co., 110 F.3d 1418, 1423 (9th Cir. 1997), overruled in part on other grounds, Dizol, 133 F.3d at 1227, and Maryland Casualty Co. v. Knight, 96 F.3d 1284, 1288 (9th Cir. 1996).[2] Yet none of the controlling authorities cited support Allstate's proposition. For instance, in Polido, the Ninth Circuit stated that "in determining whether to exercise its discretionary jurisdiction to reach the merits in an action for declaratory relief, the dispositive question is not whether the pending state proceeding is 'parallel,' but rather whether there was a procedural vehicle available to the insurance company in state court to resolve the issues raised in the action filed in federal court." 110 F.3d at 1423. Similarly, while Maryland Casualty refers to cases involving parallel proceedings as "the primary instance" in which a court should abstain from hearing a declaratory judgment action, that case nowhere suggests a parallel proceeding is a necessary precondition for abstention. 96 F.3d at 1288. Instead, the Ninth Circuit has clearly stated that "the absence of a parallel state proceeding is not necessarily dispositive; the potential for such a proceeding may suffice." Golden Eagle Ins.

[2] Allstate also cites Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1009 (9th Cir. 1997), however that case does not reference, analyze, or discuss Wilton or Brillhart at all, and instead involves an entirely different branch of abstention doctrine.

Co. v. Travelers Cos., 103 F.3d 750, 754 (9th Cir. 1996), overruled in part on other grounds, Dizol 133 F.3d at 1227; see also Wilton, 515 U.S. at 290 (declining to "delineate the outer boundaries" of district court discretion to deny declaratory relief, including under circumstances "in which there are no parallel state proceedings").

Even setting aside the question of whether abstention is ever appropriate where there is no pending parallel state court proceeding, Allstate interprets 'parallel' too narrowly. Allstate suggests, relying on language from Wilton, that "because this action and the Underlying Action do not involve the 'same issues' or the 'same parties,' they are manifestly not 'parallel.'" Opp'n at 5 (quoting Wilton, 515 U.S. at 282). However the portion of Wilton on which Allstate relies does not impose such a rigid parallelism requirement. Instead, the quoted language from Wilton merely explains the holding in Brillhart that "at least where another suit involving the same parties and presenting an opportunity for ventilation of the same state law issues is pending in state court," the district court should consider abstention. See 515 U.S. at 282. Furthermore, also contrary to Allstate's view, "[t]he Ninth Circuit construes 'parallel actions' liberally. Underlying state actions need not involve the same parties nor the same issues to be considered parallel."[3] Keown v. Tudor Ins. Co.,

[3] Other courts appear to impose a stricter parallelism standard than the Ninth Circuit. See, e.g., Scottsdale Ins. Co. v. Detco Indus. Inc., 426 F.3d 994, 997 (8th Cir. 2005) (considering parallel proceedings a "threshold issue" and finding parallelism only if "substantially the same parties litigate substantially the same issues in different forums") (quoting New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am., 946 F.2d 1072, 1073 (4th Cir. 1991)); Clay Reg'l Water v. City of Spirit Lake, 193 F. Supp. 2d 1129, 1137 (N.D. Iowa 2002) (stating that "a parallel

621 F. Supp. 2d 1025, 1037 (D. Haw. 2008) (citations omitted). Instead, "[i]t is enough that the state proceedings arise from the same factual circumstances" as the declaratory judgment action. Golden Eagle, 103 F.3d at 755 (citing Am. Nat'l Fire Ins. Co. v. Hungerford, 53 F.3d 1012, 1017 (9th Cir. 1995), overruled in part on other ground, Dizol, 133 F.3d at 1227). Furthermore, the fact that an insurer is not a party to the underlying state court proceeding is immaterial. See Clarendon Am. Ins. Co. v. Sorg Corp., No. 07-1966 SC, 2007 WL 1880291, at *2 (N.D. Cal. June 29, 2007) (Conti, J.) ("[T]he Ninth Circuit has found that state court actions not involving the insurance carrier were sufficiently parallel to the declaratory relief action to merit consideration and dismissal under Brillhart.") (citing Golden Eagle; Emp'rs Reins. Corp. v. Karussos, 65 F.3d 796, 800 (9th Cir. 1995), overruled in part on other grounds, Dizol, 133 F.3d at 1227).

Here, both this case and the Underlying Action arise from the same factual circumstances. Reviewing the language of the Policy, several factual issues appear relevant to both this suit and the Underlying Action. The Underlying Action involves claims against Tucknott, Robert A. Tucknott & Associates, Inc., and Tucknott

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state court proceeding is a necessary prerequisite to the use of either the Colorado River-Moses H. Cone or Brillhart standards of abstention"). Nevertheless it is unclear how imposing a strict parallelism requirement would further the twin goals of the Brillhart line of cases: judicial economy and cooperative federalism. Such a strict parallelism requirement would certainly result in abstention in cases involving pure forum-shopping or reactive declaratory judgment actions, but it might nevertheless result in abstention being denied in other desirable cases, for instance those involving highly significant issues of state law or factually overlapping cases which nonetheless involve distinct legal issues and theories. See, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh v. Simpson Manuf. Co., 829 F. Supp. 2d 914, 922 (D. Haw. 2011) (considering the unsettled nature of a particular question of Hawaiian law in staying a declaratory judgment action).

Electric Company, "either individually or under a theory of respondeat superior." Mot. at 2. At the time of the accident, it appears the vehicle Tucknott was driving was registered to "Robert A Tucknott/Assoc Inc[.]" ECF No. 22 ("Brown Decl.") Ex. C ("Vehicle Regis."). The Policy at issue provides coverage for, among other things, "'autos' you lease[d], hire[d], rent[ed] or borrow[ed]," and, specifically for Mr. Tucknott, even for autos he did not "own, hire or borrow" so long as the vehicle was not owned by him individually "or by any member of his or her household." ECF No. 1 ("Compl.") ¶¶ 14, 17. The relationships between Tucknott, his businesses, the vehicle, and his activities on the day of the accident are likely to be relevant both to vicarious liability and policy interpretation. Accordingly, the Court finds both disputes arise from the same factual circumstances.

Moreover, Allstate's argument that "the state and federal actions involve completely different issues: the state court proceeding is a personal injury action . . . while this suit involves the interpretation of Allstate's insurance policy" is unavailing. "[D]ifferences in factual and legal issues between the state and federal court proceedings are not dispositive because the insurer 'could have presented the issues that it brought to federal court in a separate action to the same court that will decide the underlying tort action.'" Polido, 110 F.3d at 1423 (quoting Karussos, 65 F.3d at 800). As the Court previously explained, there is an available procedural vehicle for Allstate to raise these issues in state court. See Cal. Civ. P. Code § 1060.

Here, the Court finds that the state court in the Underlying Action is better equipped to resolve this declaratory judgment

action. First, as explained above, there is the potential for several overlapping factual issues. Second, the state court is more familiar with the parties and the state law issues likely to arise in interpreting the Policy. Accordingly, this factor also weighs in favor of abstention.

D. Remaining Factors

Finally, both sides argue they will be prejudiced if the Court does not adopt their position. Defendants argue the Court should abstain from hearing this action because exercising jurisdiction over the declaratory judgment action will result in litigation, and hence discovery, on two fronts. Mot. at 2-3. Allstate argues that Defendants overstate the likelihood of duplicative discovery, and in any event, because the coverage issues would only be resolved in state court after the merits of the Underlying Action, Allstate would suffer the bulk of any prejudice by being forced to continue paying Tucknott's defense costs during the full pendency of the tort action. Opp'n at 8-10.

Allstate's argument is well-taken, but ultimately not enough to sway the Court from its view that this dispute is better resolved in state court. Nevertheless, one of the cases cited by Allstate, Montrose Chemical Corp. v. Superior Court, 25 Cal. App. 4th 902, 910 (Cal. Ct. App. 1994), belies this position. In that case, the Court of Appeal noted that "[i]n a case where there is no potential conflict between the coverage issues and the issues in the third party action, the carrier may obtain an early trial date in the coverage action," thereby possibly ending its duty to defend. While Allstate failed to persuade the Court that there is no potential factual overlap between coverage issues and issues in

the Underlying Action, if Allstate continues to believe that to be the case, it can seek an accelerated resolution of the coverage issues in state court.

As a result, the Court is not persuaded that prejudice weighs more than weakly against abstention.

V. CONCLUSION

For the reasons set forth above, the Court finds that the Brillhart factors weigh against the exercise of jurisdiction in this case and in favor of the resolution of these issues in state court. Accordingly, Allstate's complaint is DISMISSED without prejudice.

IT IS SO ORDERED.

Dated: October 23, 2014

UNITED STATES DISTRICT JUDGE